



**NARAL**  
Pro-Choice America

## **The “Child Interstate Abortion Notification Act”: Cruel, Hopelessly Complex, and Unconstitutional**

In an attempt to impose the most draconian state parental-involvement laws on every other state in the country, in 1998, anti-choice lawmakers introduced legislation called the “Child Custody Protection Act.” The bill proposed to make it a federal crime for a caring adult other than a parent to accompany a young woman across state lines for abortion care. The House has passed the bill three times. To date, the Senate has never fully considered the legislation.

In early 2005, anti-choice lawmakers reintroduced the bill, but changed it significantly. The new legislation, now called the “Child Interstate Abortion Notification Act” (CIANA) – still includes all the provisions of the old “Child Custody Protection Act,” but now also has vast new sections.

Following is more information about the new legislation.

### **Analysis:**

**CIANA imposes an impossibly complex patchwork of parental-involvement laws on women and doctors across the country.** The bill proposes a variety of new mandates on women, families, and doctors. Among other things: (1) The bill forces doctors to learn and enforce 49 other states’ laws, *under the threat of fines and prison sentences*. (2) In many cases, CIANA forces young women to comply with *two states’* parental-involvement mandates. (3) *In some cases CIANA requires a doctor to notify a young woman’s parents in person, in another state,* before abortion services can be provided. (4) In some cases, even if a parent travels with his or her daughter to obtain abortion care, the doctor must still give “notice” to the parent and wait 24 hours before providing the care. In such cases, this requirement acts as a built-in *mandatory delay* – which makes it more difficult logistically, more expensive, and more burdensome all around for the family – and may even endanger the young woman’s health.

CIANA proposes the following new scheme:

- (1) If a young woman comes from a state with a strict parental-involvement law, and goes to another state with a strict parental-involvement law, she must **comply with BOTH states’ laws**. If she chooses to use a **bypass option**, she

must navigate the bypass systems in BOTH states. (Example: Missouri to Kansas.)

- (2) If a young woman comes from a state with a strict parental-involvement law, and goes to a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified, in place of a parent), she must comply with BOTH states' laws. If she chooses to use a bypass option, she must navigate the bypass systems in BOTH states. If she chooses not to use a bypass option in her home state – in other words, if her parent has already been notified – the doctor must, paradoxically, still give notice to the parent IN PERSON, IN ANOTHER STATE. (Example: Kentucky to Ohio.)
- (3) If a young woman comes from a state with a strict parental-involvement law, and goes to a state with no parental-involvement law, she must comply with her home state's law. If she chooses not to use a bypass option in her home state – in other words, if her parent has already been notified – the doctor must, paradoxically, still give notice to the parent IN PERSON, IN ANOTHER STATE. (Example: Pennsylvania to New York.)
- (4) If a young woman comes from a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified, in place of a parent), and goes to a state with a strict parental-involvement law, she must comply with the destination state's stricter law. Note: This is the case currently. (Example: Wisconsin to Minnesota.)
- (5) If a young woman comes from a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified, in place of a parent), and travels to a state with a similar law, she must comply with the destination state's law AND have either a bypass from her home state or the doctor must give notice to the parent IN PERSON, IN ANOTHER STATE. (Example: North Carolina to South Carolina.)
- (6) If a young woman comes from a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified, in place of a parent), and travels to a state with no parental-involvement law, she must either have a bypass from her home state or the doctor must give notice to the parent IN PERSON, IN ANOTHER STATE. (Example: Maine to New Hampshire.)
- (7) If a young woman comes from a state that has no parental-involvement law and travels to a state with a strict parental-involvement law, she must comply with the destination state's law. Note: This is the case currently. (New Hampshire to Massachusetts.)
- (8) If a young woman comes from a state that has no parental-involvement law and travels to a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified, in place of a parent), she must comply with the destination state's law, AND the

doctor must give notice to the parent IN PERSON, IN ANOTHER STATE.  
(Example: New Mexico to Colorado.)

- (9) If a young woman comes from a state that has no parental-involvement law and travels to a similar state, the doctor must give notice to the parent IN PERSON, IN ANOTHER STATE. (Example: Idaho to Washington.)

**CIANA also imposes a whole new set of cross-state reporting mandates on abortion providers.**

- The legislation ostensibly provides an exception to the draconian parental-involvement scheme outlined above if a young woman informs a doctor that she is the victim of abuse. Such a conversation then triggers a new mandate on the doctor: he or she must notify “the authorities” of the parent’s abuse IN ANOTHER STATE. Each state has its own legal requirements in this area, and its own agencies to which the behavior must be reported – and in some cases, the report must be filed with the county. It is important to note that doctors are already required to report cases of abuse, but CIANA imposes a *cross-jurisdictional* mandate, which is new and possibly unique.
- Additionally, the bill establishes no mechanism for this new type of cross-state reporting, and does not specify in what manner or with what level of detail the reporting must occur. *This is far from being a mere bureaucratic headache; CIANA gives doctors no guidance about to whom or with what detail the report must be made, and therefore they cannot be sure that even their most thorough and good-faith attempts to comply with the law will keep them from risking fines or a prison sentence.*
- Of course, child abuse is a very serious matter. But if sponsors of CIANA are genuinely concerned about abuse committed against teens, why are the cross-state reporting mandates triggered only when the young woman seeks abortion care – and not, say, adoption counseling or prenatal care? For that matter, much more could be done society-wide to prevent, detect, and deter domestic abuse; why is this requirement not included as part of a broader national policy, instead of being singled out for imposition against abortion providers? Clearly, this new cross-state reporting mandate seems designed to treat the teen’s report as skeptically as possible, to make the doctor run a bureaucratic gauntlet under threat of a prison sentence, and to make the provision of abortion services as difficult and cumbersome as possible for all parties involved.

**CIANA includes the original, flawed provisions of the “Child Custody Protection Act.”** CIANA would still prohibit anyone other than a parent, including a grandparent, aunt, adult sibling, or religious counselor from accompanying a young woman across state lines for an abortion if the home state’s parental-involvement law has not been met.

### **The Legislation's Major Flaws:**

**CIANA will not improve family communication or help young women facing crisis pregnancies.** NARAL Pro-Choice America believes that loving parents should be involved when their daughter faces a crisis pregnancy. Every parent hopes that a child confronting a crisis will seek the advice and counsel of those who care for her most and know her best. In fact, even in the absence of laws mandating parental involvement, many young women do turn to their parents when they are considering an abortion. One study found that 61 percent of parents in states without mandatory parental consent or notice laws knew of their daughter's pregnancy.<sup>1</sup>

Unfortunately, some young women cannot involve their parents because they come from homes where physical violence or emotional abuse is prevalent or because their pregnancies are the result of incest. In these situations, the government cannot force healthy family communication where it does not already exist – and attempts to do so can have tragic consequences for some girls. *In Idaho, a 13-year-old sixth-grade student named Spring Adams was shot to death by her father after he learned she planned to terminate a pregnancy caused by his acts of incest.*

In fact, major medical associations - including the American Medical Association, the American College of Obstetricians and Gynecologists, the American College of Physicians, and the American Public Health Association - all have longstanding policies opposing mandatory parental-involvement laws because of the dangers they pose to young women and the need for confidential access to physicians. Additionally, the American Academy of Pediatrics and Society for Adolescent Medicine have opposed the "Child Custody Protection Act" and say it may increase the risk of harm to adolescents by delaying access to appropriate medical care.

Furthermore, many young women who obtain abortions outside of their home states do so for reasons that have nothing to do with avoiding their home states' laws. The most prevalent and compelling of these reasons is the lack of abortion providers. Only 13 percent of U.S. counties have an abortion provider.<sup>2</sup> Several states, in fact, have only a single provider or a provider who may be located many hours away from a young woman's home.<sup>3</sup> It is also perfectly reasonable for a young woman attending college or boarding school in another state to seek medical care locally. For these reasons and others, it is not at all unusual for a young woman's provider to be outside of her state of residence.

In sum, CIANA is just the latest in a long line of perhaps well-intentioned, but ultimately deeply flawed, proposals that attempt to curb young women's access to private, confidential health services under the guise of protecting parental rights.

**CIANA's new legal scheme is impossibly Byzantine.** CIANA requires a doctor to have a near-encyclopedic knowledge of the mandatory parental-involvement laws in each of the 50 states, their specific requirements, their judicial-bypass procedures, and their interaction with CIANA. If sponsors are interested in imposing a national parental-involvement mandate for abortion services, they should make this proposal directly. Rather, they offer a hopelessly complex – in some cases even nonsensical – patchwork of mandates. One can only speculate that the anti-choice movement hopes the scheme will be so difficult to understand that women and doctors will either: (1) give up in exasperation or; (2) with the best of intentions, make a mistake in complying with one of the many provisions and become subject to federal prosecution, fines, and prison sentences. Either way, they come closer to their ultimate goal of making abortion illegal – or, failing that, unavailable.

**CIANA may be unconstitutional for at least three reasons.**

- **Some scenarios under the CIANA patchwork will offer young women no option of a judicial bypass whatsoever.** This aspect of CIANA alone will likely result in a court striking it down. The U.S. Supreme Court has stated that, in order to be constitutional, a state statute requiring parental involvement must offer an alternative, such as a judicial bypass.<sup>4</sup> Under CIANA, young women in a variety of circumstances would be denied this constitutional right:
  - ✓ Take the example of a young woman from a state without a parental-involvement law who travels to a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified, in place of a parent) – scenario #8 above. In this case, even though she has complied with all the provisions of the destination state's law, her doctor will still have to notify her parents IN PERSON, IN ANOTHER STATE, and she will have no option for a judicial bypass. (Example: New Mexico to Colorado.)
  - ✓ Consider another example: A young woman from a state without a parental-involvement law travels to a state that also has no parental-involvement law – scenario #9 above. Although neither state mandates parental involvement, under CIANA, now her doctor will have to notify her parents IN PERSON, IN ANOTHER STATE. Moreover, she will not even have the option of a judicial bypass, a provision that would be required if CIANA were a state law. (Example: Idaho to Washington) It is outrageous and even nonsensical to impose even more severe

restrictions (lack of judicial bypass) on young women who are from or going to states without parental-involvement laws than those who are from or going to states with parental-involvement laws.

- **CIANA contains no health exception, and its life exception is inadequate.**  
Although CIANA allows an exception to its mandates when the life of a pregnant woman is in jeopardy, this “life” exception is dangerously narrow. The exception limits the situations that would qualify under it by enumerating certain circumstances – but not others. As the Supreme Court has recognized, laws containing life exceptions cannot pick and choose among life-threatening circumstances.<sup>5</sup> Moreover, the legislation unconstitutionally contains no exception whatsoever to protect a woman's health. As the Supreme Court noted in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, “the essential holding of *Roe* forbids a State from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health.”<sup>6</sup> The centrality of protecting women's health was underscored most recently by the Supreme Court in *Stenberg v. Carhart*, which struck down Nebraska's ban on safe, common abortion procedures.<sup>7</sup>
- **CIANA runs roughshod over states' rights.** The sponsors present CIANA as an initiative that protects the “rights” of certain states to enforce their laws. The legislation, however, infringes on fundamental principles of federalism in at least two ways:
  - ✓ **CIANA imposes new mandates on states that have chosen not to enact them.** Sixteen states and the District of Columbia do not have enforceable laws mandating parental involvement in a young woman's decision to terminate a pregnancy.<sup>8</sup> CIANA would impose parental involvement mandates not only for women who travel from those states to other states, but for women who travel to those states to obtain an abortion. Even more troubling, in the case of young women who travel from a state without a parental-involvement mandate to either a similar state or to a state whose parental-involvement law has reasonable alternatives (for example, allows another responsible adult to be notified, in place of a parent), the young woman would be subject to mandatory parental notification without any opportunity to obtain a judicial bypass. CIANA will usurp the state's right not to enact a parental-involvement law and impose a mandate that her parents be notified, without providing her even with the right given young women in the states with the strictest parental-involvement mandates on the books. CIANA is a clear attempt by anti-choice members of Congress to override states that have chosen not to enact such laws.



- ✓ **Right to travel.** Under the U.S. Constitution, each citizen has the right to move freely from one state to another and to enjoy the “privileges and immunities” of a state he or she visits.<sup>9</sup> *The same principle allows citizens from states that outlaw gambling to gamble in states where it is permitted. Would Congress consider forcing, say, Californians to carry their home state’s gun laws with them when they travel to other states?* By saddling a young woman with the laws of her home state wherever she may go, CIANA denies her the right to enjoy the laws of another state and thus violates her constitutionally protected right to travel. Such legislation flies in the face of established Supreme Court precedent, such as *Doe v. Bolton*, which struck down Georgia’s law forbidding out of state residents from obtaining abortion services in Georgia.<sup>10</sup> The Supreme Court also held in *Saenz v. Roe* that the protection afforded to individuals by the citizenship clause of the Fourteenth Amendment limits the federal government. “It provides important protections for nonresidents who enter a State whether to obtain employment . . . [or] to procure medical services . . . .”<sup>11</sup> The Supreme Court has further held that a compelling state interest must be shown in support of any classifications that serve to penalize the constitutional right to move between states. No such interest has been demonstrated by the supporters of CIANA.<sup>12</sup>

**CIANA requires doctors to give parental notice IN PERSON, IN ANOTHER STATE.**

One major provision of CIANA requires a doctor, in many cases, to notify a young woman’s parents in person before he or she can provide abortion care – but since CIANA applies only to cases in which the patient is from another state, *this requirement requires physicians to travel out-of-state and back before providing a safe and legal medical procedure*. CIANA only allows “constructive notice” (notice by certified mail with an additional 48-hour mandatory delay) if the in-person notice is “not possible after a reasonable effort has been made.”<sup>13</sup> The bill does not define what constitutes a “reasonable effort,” and does not allow an agent of the physician to serve the in-person notice. No state law has a similar requirement – probably because it is so outrageous – so its inclusion in CIANA is further evidence that the sponsors’ goal is to prevent doctors from ever providing abortion services for young women.

**CIANA imposes a new mandatory delay on abortion care.** In some of CIANA’s scenarios, even if a parent travels with his or her daughter for abortion services, the doctor must still give “notice” to the parent and wait 24 hours before providing the care. In such cases, this requirement acts as a built-in mandatory delay – which makes it more difficult logistically, more expensive, and more burdensome all around for the family.

**The “Child Custody Protection Act” provisions in CIANA remain hopelessly flawed.** The original “Child Custody Protection Act” remains part of the new CIANA legislation, and none of its problems have been corrected. In particular, CIANA criminalizes caring adults who attempt to assist young women facing crisis pregnancies. In one study, 93 percent of minors who did not involve a parent in their decision to obtain an abortion were still accompanied by someone to the doctor’s office.<sup>14</sup> If CIANA becomes law, a person could be prosecuted for accompanying a minor to a neighboring state, even if that person does not intend, or even know, that the parental-involvement law of the state of residence has not been followed. Although legal abortion is very safe, it is typically advisable to accompany any patient undergoing even minor surgery. A grandmother could be subject to criminal charges for accompanying her granddaughter to an out-of-state facility – even if the facility was the closest to the young woman’s home and they were not attempting to evade a parental involvement law.

#### **Worst-Case Scenarios:**

CIANA could cause the following situations to occur, among others:

- CIANA requires that at least 24 hours elapse after a parent has been given IN-PERSON notice of a young woman’s intent to have an abortion. This requirement – unprecedented at the state level – means that even if a young woman’s parent accompanies her to for abortion care, the provider must still delay the procedure for at least 24 hours. In such a situation, clearly the parent is involved in the medical decision; what is the point of forcing the delay? This requirement would increase the travel time and cost (for hotel or other accommodations) that a young woman and her family must endure; perhaps sponsors hope that if they make getting the service so difficult and cumbersome, some young women will simply to give up in frustration rather than exercise their right to choose?
- A young woman from a state without a parental-involvement law traveling to another state without a parental-involvement law (scenario #9 above) will under CIANA be subject to mandatory parental involvement – with no judicial-bypass option whatsoever – even though neither state has such a law. Additionally, she is subject to at least a 24-hour delay, even if neither state has such a law and even if her parent accompanies her to receive the abortion.
- A young woman from a state without a parental-involvement law traveling to a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified, in place of a parent) (scenario #8 above) would be required not only to comply with the destination state’s law, but would also be subject to mandatory parental notification – with no judicial-bypass option whatsoever – even though her home state has no such



law and she has fully complied with the laws of the destination state (even if she obtained a judicial bypass of the state requirement). Additionally, she is subject to at least a 24-hour delay, even if neither state has such a law and even if her parent accompanies her to receive the abortion.

- Under CIANA, only minors who come from out of state are subject to mandatory parental notice. Minors who reside in a state with no parental-involvement law are thus treated differently from minors who are living there temporarily (such as college students) or who have traveled there.

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- <sup>1</sup> In addition to states that have not enacted a mandatory parental involvement law, this reference includes states that have such a law but do not enforce it. Stanley K. Henshaw and Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAMILY PLANNING PERSPECTIVES 199-200 (1992).
  - <sup>2</sup> Lawrence B. Finer and Stanley K. Henshaw, "Abortion Incidence and Services in the United States in 2000," *Perspectives on Sexual and Reproductive Health*, vol. 35, no. 1 (Jan./Feb. 2003), available at <http://www.guttmacher.org/pubs/journals/3500603.pdf> (last visited 1/8/04).
  - <sup>3</sup> Two states, North Dakota and Mississippi, have only one abortion clinic. *Fargo Abortion Clinic To Comply With Subpoena Seeking Insurance Records*, Assoc. Press, Aug. 25, 2004; David Crary, *In Abortion Debate, Mississippi Shows How Far A State Can Go With Array Of Restrictions*, Assoc. Press, Dec. 27, 2004. In addition, Kentucky, Nebraska, South Dakota, West Virginia, Utah and Wyoming each have five or fewer abortion providers. Lawrence B. Finer and Stanley K. Henshaw, "Abortion Incidence and Services in the United States in 2000," *Perspectives on Sexual and Reproductive Health*, vol. 35, no. 1 (Jan./Feb. 2003), available at <http://www.guttmacher.org/pubs/journals/3500603.pdf> (last visited 2/28/05); Lawrence B. Finer and Stanley K. Henshaw, "The Accessibility of Abortion Services in the United States, 2001," *Perspectives on Sexual and Reproductive Health*, vol. 35, no. 1 (Jan./Feb. 2003), available at <http://www.agi-usa.org/pubs/journals/3501603.html> (last visited 2/28/05).
  - <sup>4</sup> *Hodgson v. Minnesota*, 497 U.S. 417, 420 (1990) (requiring a bypass procedure for a two parent notification statute); *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 510 (1990) (requiring bypass procedures for parental consent statutes).
  - <sup>5</sup> *Casey*, 505 U.S. at 879.
  - <sup>6</sup> *Casey*, 505 U.S. at 880 (citations omitted).
  - <sup>7</sup> *Stenberg*, 120 S. Ct. at 2608-13.

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- 8 NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (14th ed. 2005), available at [www.prochoiceamerica.org/whodecides/trends/issues\\_young\\_women.cfm](http://www.prochoiceamerica.org/whodecides/trends/issues_young_women.cfm).
- 9 *Saenz v. Roe*, 526 U.S. 489, 501 (1999).
- 10 *Doe v. Bolton*, 410 U.S. 179, 200 (1973).
- 11 *Saenz*, 526 U.S. at 502 (citing *Doe*, 410 U.S. at 200) (emphasis added).
- 12 *Shapiro v. Thompson*, 395 U.S. 618, 634 (1969), overruled in part on other grounds by 415 U.S. 651 (1974).
- 13 H.R. 748, 109<sup>th</sup> Cong. (2005).
- 14 Stanley K. Henshaw and Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAMILY PLANNING PERSPECTIVES 207 (1992).